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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/646,429

08/22/2003

Robert L. Billmers

3043.FDI

9142

7590

10/11/2006

Karen G. Kaiser
NATIONAL STARCH AND CHEMICAL COMPANY
10 Finderne Avenue
Bridgewater, NJ 08807-0500

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,429

Applicant(s)

BILLMERS ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 14 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is vague and indefinite. Claim 14 depends from claim 1; however, it is not clear if "a food portion" recited in step a is the same food portion recited in claim 1 or a different food portion.

Claim 20 has the same problem as claim 14.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,9,10,11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Bell et al.

Bell et al disclose a fried composition comprising a food portion and a batter containing starch that has been cross-linked with succinic anhydride. The batter adheres directly on the food portion. The food portion includes chicken, fish, fruit etc.. (see col. 2 lines 20-25, col. 3 line 14, col. 7 lines 15-20, col. 8 lines 13-14).

Bell et al disclose coating food composition with starch succinate; thus, it is inherent the food will have the claimed reduction of fat content as claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al in view of Richards et al.

Bell et al do not teaching converting the starch, the water fluidity and the amount of succinic anhydride.

Richards et al teach a method of making lipophilic starch derivative for use at coating material. The process includes the steps of esterification of the starch with n-octenyl succinic anhydride. The amount of anhydride used is generally from about .1-10%. The esterified starch is converted by enzyme treatment to decrease the viscosity of the starch suspension. (see col. 2 lines 60-68, col. 3 lines 30-40)

It would have been obvious to one skilled in the art to convert the starch in the Bell et al process as taught by Richards et al when desiring to obtain a starch suspension having low viscosity. For example, when desiring only a thin film of starch on the food portion instead on thicker layer of a batter, it would have been obvious to have a starch suspension with low viscosity. The amount of water fluidity depends on the viscosity desired and this is a result-effective variable which can readily be

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determined by one skilled in the art. It would have been obvious to vary the amount of succinic anhydride depending on the degree of cross-linking desired. Since the starch is used for coating, it would have been obvious to one skilled in the art to follow the guide line in the amount used as taught by Richards et al.

Claims 8, 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al in view of Wu et al.

Bell et al do not disclose potato product, adding another starch and the processing steps as in claims 14 and 20.

Wu et al disclose a process for coating potato strips. The process includes the steps of blanching the potato, treating the potato in sodium chloride solution, and coating the potato with starch solution. Wu et al teach adding different type of starch in addition to the main starch component. (see col. 3 and col. 5 lines 63-67)

Bell et al disclose other products can be coated; thus, it would have been obvious to coat potato product when desiring crisp coating on such product. When the food product being coated, it would have been obvious to one skilled in the art to process the potato according to conventional method as disclosed by Wu et al. It would also have been obvious to add another starch to the batter of Bell et al to obtain different flavor, texture, viscosity etc.. Adding combination of starches in coating composition is known as shown by Wu et al. It would have been obvious to one skilled in the art to determine the appropriate amount of cation to obtain the most optimum product. This can readily be determined through routine experimentation. It would have been obvious to add the starch to the blanching water when the food portion is treated

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in the blanching water because this will save a separate coating step. Blanching the food in the water will cause any component in the water to adhere to the food. It would have been obvious to reconstituting the product by frying or oven heating depending on the texture desired. Frying will give a crispier texture.

Claims 1, 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shi et al (US2003/0099744).

Shi et al disclose a food composition comprising a food portion and a coating comprising starch succinate that is converted. The starch can be a pregelatinized starch. (see paragraphs 0015, 0017, 0024, 0040)

Shi et al do not disclose the food composition is a fried composition.

It would have been obvious to one skilled in the art to make a fried composition when wanting food having different texture and flavor. Both baking and frying are well known cooking process in the art and the selection of which depends on the fat content, calorie content, taste, texture, flavor etc.. wanted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 2, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700